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TOWNSHIP TRUSTEES—NO AUTHORITY TO PAY PREMIUMS ON LIABILITY INSURANCE POLICY COVERING TOWN HALL AND SURROUNDING PROPERTY.

SYLLABUS:

Township trustees have no authority to pay premiums on a liability insurance policy covering a town hall and surrounding property.

Columbus, Ohio, April 22, 1949

Hon. H. K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“I have had the question presented to me as to whether township trustees have authority to pay the premium on a liability policy covering the town hall and surrounding property.

“I have checked Section 3298-17 and am unable to find any citations pro or con. It seems like a rather close question to me and could possibly go either way and will you, therefore, please give me your opinion in the matter at your earliest convenience.”

The fundamental question becomes “is there a liability or possibility of liability attaching under the law to townships or township trustees in connection with the ownership of a town hall and surrounding property?”

There has been no creation of liability of a township or its trustees applicable to the operation or use of buildings or real property where the function performed is governmental in nature as distinguished from proprietary. This proposition was true at common law and exists also under statutory law unless in the latter there is an express provision negating it.

In 39 O. Jur. 337 it is said :

“In seeking to ascertain the liability of a township, whether in tort or contract, it must be remembered that townships are but political subdivisions of the state, organized as part of the machinery of the government for the performance of functions of a public nature, and that, as such, they partake of the state’s immunity from liability. In other words, in the absence of statute, they are not liable for negligence in the performance of their public duties.”

In Opinion No. 787, Opinions of the Attorney General for 1937, at page 1455, it was said :

“As to property damage and public liability insurance, suffice it to say that this office has consistently held that a political subdivision cannot legally enter into a contract and expend public moneys for the payment of premiums on public liability or property damage insurance covering damages to property and injury to persons unless there is a liability created against the political subdivision by statute. Opinions of the Attorney General for 1934, Vol. II, page 1120. Where there is a liability created, however, the Attorney General in 1931 in the opinions for that year, Vol. I, page 303, held as disclosed by the syllabus :

‘By reason of the liability created by Section 3298-17, General Code, boards of township trustees may lawfully protect themselves against liability for damages by procuring liability or property damage insurance upon township owned motor vehicles and road building machinery while such vehicles and machinery are being operated in furtherance of the official duties of said trustees.’”

Section 3298-17, General Code, has placed upon the board of township trustees liability for negligence or carelessness in the discharge of its official duties. Section 3298-17 reads :

“Each board of township trustees shall be liable, in its official capacity for damages received by any person, firm or corporation, by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties.”

Section 3298-17, General Code, must be construed strictly as in derogation of the common law. *Washington Township v. Rapp*, 50 O. App. 1.

In 39 O. Jur. 338, it has been said, referring to Section 3298-17, General Code, that:

“By express statutory provision, boards of township trustees are liable, in their official capacity, for injuries resulting from their negligence or carelessness in the discharge of their official duties *with respect to the public roads under their jurisdiction and control.*” (Emphasis mine.)

In Opinion No. 2995, Opinions of the Attorney General for 1931, at page 305, it was said:

“* * * *the liability imposed by the statute on township trustees for negligence or carelessness in the operation of motor vehicles and road building machinery* in the construction, reconstruction and repair of township roads or in the furtherance of any business of the township may lawfully be protected against by carrying of liability insurance.” (Emphasis mine.)

In the case of *Partlow v. Monroe Township*, 44 O. App. 447, the court in substance held that the trustees of a township who have the control and management of a building owned by the township act in a governmental capacity in leasing the building for private purposes, so that the township cannot be held liable for damages to the tenant's property from rain water coming through a leaky roof.

In Opinion No. 5949, Opinions of the Attorney General for 1943, at page 184, it was said in reference to a board of county commissioners, a body politic similar to a township board of trustees:

“Since the board of county commissioners cannot be liable, there is nothing in this respect for the board to insure against. The payment of a premium on account of such insurance, if procured by the board, would be tantamount to a gift of public funds to the insurance company. The statement of such a proposition demonstrates its illegality.”

I am therefore of the opinion that township trustees have no authority to pay premiums on a liability insurance policy covering a town hall and surrounding property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.